Eight Mile Style, LLC et al v. Apple Computer, Incorporated
Doc. 43 Att. 2

Exhibit B

Rule 30(b)(6) deposition notice to Aftermath

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UNITED STATES DISTRICT COURT
FOR THE IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EIGHT MILE STYLE, LLC, et al.

Plaintiffs,

vs.

Case No. 2:07-cv-1q3164
Hon. Anna Diggs Taylor

APPLE COMPUTER, INC. and AFTERMATH RECORDS d/b/a AFTERMATH ENTERTAINMENT,

Defendants.

Howard Hertz, Esq. (P26653) Jay G. Yasso, Esq. (P45484) Hertz Schram PC 1760 S. Telegraph Rd., Suite 300 Bloomfield Hills, MI 48302 (t): (248) 335-5000 (e): hhertz@hertzschram.com (e): jyasso@hertzschram.com Attorneys for Plaintiffs	Richard S. Busch (TN BPR#14594) King & Ballow 1100 Union Street Plaza 315 Union Street Nashville, TN 37201 (615) 259-3456 rbusch@kingballow.com Attorneys for Plaintiffs

NOTICE OF 30 (B)(6) DEPOSITION OF AFTERMATH RECORDS.

PLEASE TAKE NOTICE that pursuant to Rules 26, 30 and 45 of the Federal Rules of Civil Procedure, Eight Mile Style, LLC and Martin Affiliated, LLC ("Plaintiffs") will take the deposition upon oral examination of Aftermath Records by the person(s) designated by Defendant pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure as the most knowledgeable and able to testify concerning the subject matters identified Exhibit A.

The deposition will take place on May 26, 2008, beginning at 9:00 a.m. P.D.T. at the offices of Christensen, Glaser, Fink, Weil and Shapiro, LLP, 10250 Constellation Blvd., 19th Floor, Los Angeles, CA 90067, and will continue from day to day, Sundays and holidays excluded, until completed, before a notary public or other officer authorized to administer oaths. Pursuant to Rule 30(b)(2), the deposition shall be recorded by stenographic means, and by videotape.

This Notice of Deposition is without prejudice to Plaintiff's right to notice any further deposition of any director, officer, employee, or agent of Defendants or any of its subsidiaries in his or her professional or individual capacity.

DATED: May 12, 2008

Respectfully submitted,

KING & BALLOW

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Attorneys for Plaintiffs

EXHIBIT A

I. DEFINITIONS

A. "You" or "Defendants" or "Defendant" refers to Defendants Apple Computer, Inc. and Aftermath Records, collectively or separately, named in and referred to as such in the Complaint in the above-referenced case, their agents, representatives, attorneys, and/or any other persons acting or purporting to act on their behalf.

B. "Aftermath" refers to Defendant Aftermath Records d/b/a Aftermath Entertainment its parent company, its subsidiaries, its affiliates, and any other related company, as well as their agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

C. "Apple" refers to Defendant Apple Computer, Inc. its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

D. "Plaintiffs" collectively refers to Plaintiffs Eight Mile Style, LLC and Martin Affiliated, LLC, named in and referred to as such in the Complaint in the above-referenced case, their agents, representatives, attorneys, and/or any other persons acting or purporting to act on their behalf.

E. "Eight Mile" refers to Plaintiff Eight Mile Style, LLC its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

F. "Martin Affiliated" refers to Plaintiff Martin Affiliated, LLC its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

G. "UMG" or "Universal" refers to UMG Recordings, Inc., its parent company, its subsidiaries, its affiliates, and any other related company, as well as their agents, representatives, attorneys, and/or any other persons or entities acting or purporting to act on their behalf.

H. "Eminem" refers to Marshall B. Mathers III, his agents, representatives, attorneys, and/or any other persons acting or purporting to act on his behalf.

I. "1998 Agreement" shall mean the agreement between F.B.T. and Aftermath on March 8, 1998 whereby F.B.T. agreed to furnish to Aftermath the exclusive recording services of Eminem.

J. "2003 Agreement" shall mean the agreement entered into by Aftermath and Eminem on August 22, 2003 which expressly affirmed the 1995 Agreement, the March 9, 1998 Agreement, the Letter of Inducement, and the Novation.

K. "Eminem Compositions" shall mean the musical compositions written and composed, in part, by Eminem, which are attached as collective Exhibit A to the Complaint in this action.

L. "And" and "or" each shall be construed either conjunctively or disjunctively as necessary to bring within the scope of these topics any information or document that might otherwise be construed to be outside its scope.

M. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, or other perceptible means, including, but not limited to, telephone conversations, letters, documents, memoranda, notes, telegrams, facsimile, transmissions, electronic mail, meetings, and personal conversations.

N. References to the plural shall include the singular; references to the singular shall include the plural.

O. References to the feminine shall include the masculine; references to the masculine shall include the feminine.

P. All legal terms, accounting terms, and other technical terms associated with a particular industry, profession or identifiable body of knowledge shall have the meanings customarily and ordinarily associated with those terms within that industry, profession or discipline.

Q. "Permanent download" shall mean the delivery of a digital audio file to an end user's computer where such recording may be accessed by the end user without the limits set forth in a conditional download.

R. "Conditional download" shall mean the delivery of a digital audio file to an end user's computer, with certain limits imposed on the end user's ability to enjoy the sound recording, e.g., the recording may only be accessed for a certain number of plays, or for so long as the consumer continues subscribing to a particular music service. This definition includes Limited Download as that term is defined on the document produced in this action bates stamped AFT 0056512.

S. "Streaming" shall mean the transmission of a digital audio file by means of an internet transmission that is substantially contemporaneous with the audible rendering of such sound recording to the end user using a technology that is not designed to result in a reproduction of the sound recording that would be usable without simultaneous, active connection to the digital transmission source or after the cessation of the transmission, other than a transitory reproduction required to render such contemporaneous performance.

T. "Mastertone" shall mean a digital audio file formatted for playback on wireless devices capable of voice communications or text messaging including but not limited to cellular telephones, personal digital assistants, and pagers.

U. "Digital Music Provider" refers to any and all entities including, but not limited to, iTunes, Buy.com, Napster, Rhapsody, iMeem, and Nokia, among others, that reproduce, sell and/or distribute master recordings for digital uses, including but not limited to digital download, digital streaming, and mastertones.

V. "Digital Use" shall include Permanent downloads, Conditional downloads, Streaming, Mastertones, and any other format of digital audio files used by a Digital Music Provider to reproduce, sell and/or distribute master recordings.

II. SUBJECT MATTERS UPON WHICH DEPONENT WILL BE REQUIRED TO TESTIFY

1. The identity of any agreements for permanent download in which the Digital Music Provider is responsible for obtaining mechanical licenses and/or paying mechanical royalties to music publishers, and the reason why they have that responsibility in those agreements.

2. Whether the mechanical license signed by Joel Martin for the song "Lose Yourself" was ever countersigned by UMG, or otherwise approved, and whether it is now in effect.

3. Why separate publishing licenses for Digital Uses were sent by UMG to plaintiffs and/or Joel Martin and anybody else to whom such licenses for Digital uses were sent who also were covered by controlled composition clauses in agreements.

4. The author of the October 11, 2002 letter, produced in this action by plaintiffs and bates stamped 8M – 0015, signed by Chad Gary, which provides that UMG hopes that the publisher will execute separate permanent digital download agreements, and why such letter was sent.

5. Any objections voiced by Joel Martin to the signing of licenses for Digital Uses, and the decisions made by UMG in light of those objections.

6. The sending of licenses for Digital Uses to The Harry Fox Company.

7. Any communications with Apple regarding Joel Martin's cease and desist letter or any objections made by Mr. Martin regarding the Eminem songs being made available for permanent download.

8. The publishing accounting statements regarding the Eminem compositions, and why the statements only reflect "digital tracks" and not specific information broken down by category of Digital Use (such as permanent download, conditional download, streaming, etc.), as well as whether any changes were made to the information such publishing statements contained about Digital Uses and why.

9. Whether any UMG, Interscope or Aftermath artists have signed separate agreements allowing their songs to appear on iTunes or the services of other Digital Music Providers, the identity of such artists, why UMG allowed them to do so, and whether the Digital Music Providers account directly to them.

10. The identity of artists who have negotiated separate digital download royalty provisions with UMG, Interscope, or Aftermath, or have negotiated whether their songs will be allowed on iTunes or the services of other Digital Music Providers, and whether such negotiations are part of "high end" recording agreements.

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 10250 Constellation Boulevard, Nineteenth Floor, Los Angeles, California 90067.

On May 12, 2008, I served the foregoing document(s) described as:

NOTICE OF 30(B)(6) DEPOSITION OF AFTERMATH RECORDS

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☒ (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Los Angeles, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☐ (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☒ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee(s) named on the Service List.

Executed this 12th day of May, 2008, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Judith Hughes

JUDITH HUGHES

SERVICE LIST

F.B.T. Productions, LLC, et al. v. Aftermath Records, et al.
USDC Case No.: CV 07-03314 PSG (MANx)

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